

Remarks

The Examiner has rejected claims 9-23 as anticipated by Foy (US 4,923,079). However, the corner support element (86) and the flange (98) are not alternating projection areas and recessed areas on a lower surface of the base. For one thing, they are not formed on the lower surface of the base of the container, but are spaced away from the lower surface of the base of the container. Therefore, claims 9-23 are not anticipated by Foy '079.

Applicant has added claims 24-30, which depend from independent claim 9.

New claim 24 recites that the lower surface of the base includes an array of alternating projection areas and recessed areas. Foy '079 does not have such an array. Therefore, new claim 24 is independently patentable over Foy '079.

New claim 25 recites that base is substantially between the lateral flanges on the first pair of opposed side walls when the first pair of opposed side walls are in the inwardly collapsed position. This feature is shown in Figure 3 of the present application. Even if the support element 86 and flange 98 are considered the projection areas, Foy '079 does not disclose that the base is substantially between the lateral flanges when in the collapsed position. Therefore, claim 25 is independently patentable over Foy '079.

New claim 26 recites that the lower surface of the base is substantially coplanar with lower edges of the lateral flanges on the first pair of opposed side walls when the first pair of opposed side walls are in the inwardly collapsed position, as shown in Figure 3 of the present application. Foy does not disclose this feature.

Foy '079 does not disclose that the lower surface of the base has a grid of ribs, as recited by new claim 27.

Foy '079 does not disclose that the projection areas are rectangular, with a recessed area circumscribed by each rectangular projection area, as recited by claim 28.

Foy '079 does not disclose that the recessed sections of the first pair of opposed side walls are arranged to receive the projection areas of the corresponding base cross-stacked thereon, as recited by new claim 29.

Foy '079 does not disclose that the base is substantially continuous from each of the projection areas to the upper surface of the base, or that the upper surface of the base at least partially defines the interior of the container and is the support surface for supporting items in the container, as recited by new claim 30.

The Examiner has also rejected claims 9-23 for nonstatutory double-patenting over U.S. Patent Nos. 6,015,056, 6,089,827 and 6,209,742. However, the Examiner has not even provided a *prima facie* case of obviousness-type double-patenting. The Examiner is required to point out the differences between the issued and pending claims and present a *prima facie* case why those differences would be obvious in light of the prior art, including the motivation that renders those differences obvious. (MPEP 804). None of these patents claim the alternating projection areas and recessed areas on the lower surface of the base, or that recessed sections on the first pair of opposed side walls are arranged to receive the projections of a corresponding base stacked thereabove, as required by all of the pending claims. Nor would the present claims be obvious in view of the claims of the cited patents.

Additionally, the Examiner cites *In re Schneller*. That case describes a *rare* type of double-patenting rejection (MPEP 804 (II)(B)(2)) and is not applicable here. Further, "approval of the [Examiner's SPE and] TC Director must be obtained before such a nonstatutory double-patenting rejection can be made." There is no indication that such approval was obtained here. Therefore, for this additional reason, the double-patenting rejections should be withdrawn. In any event, Applicant requests a clarification as to whether the Examiner really intended an *In re Schneller* type of double-patenting rejection.

Reconsideration is requested.

Please charge \$546 to Deposit Account No. 50-1984 (includes \$126 for seven additional claims in excess of twenty and \$420 for a 2-month extension of time to respond.). If any additional fees are due, should amounts need to be credited, please charge or credit Deposit Account No. 50-1984.

Respectfully submitted,



Dated: December 16, 2003

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